



**PATENT**  
**U.S. Application Serial No.: 10/562,064**  
**Atty. Docket No. 37488.00900US**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

*In re* Application of: )  
Ursula WIEDERMANN *et al.* )  
Application No: 10/562,064 ) Group Art Unit: Not Yet Assigned  
Filed: June 17, 2004 ) Examiner: Not Yet Assigned  
For: Passive Immunotherapy Against )  
Malignant Melanoma )

**MAIL STOP PCT**

United States Patent and Trademark Office  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Response to Notice of Missing Requirements and Petition Under 37 C.F.R. §1.47(a)**

Sir:

The above-identified national-stage application was filed with the United States Patent and Trademark Office on December 22, 2005 without a signed declaration. A Notice of Missing Requirements was mailed on January 25, 2007, requiring the oath or declaration. This response, petition, and petition for extension of time to respond are being timely filed before the expiration of the extended statutory time period for reply, which falls on Saturday, August 25, 2007. For the reasons stated herein, the undersigned hereby respectfully petitions for status under 37 C.F.R. § 1.47(a), and for filing under 35 U.S.C. § 116.

## I. REQUIRED OATH OR DECLARATION

In accordance with 37 C.F.R. 1.497(b) and 1.47(a), Applicants submit herewith an executed declaration by all of the available joint inventors with the signature block of the single non-signing inventor, Dr. Soldano Ferrone, left blank.

## II. PROOF THAT THE NON-SIGNING INVENTOR REFUSES TO EXECUTE THE APPLICATION PAPERS

On December 22, 2005, U.S. National-Stage Patent Application Serial No. 10/562,064 (“the ‘064 application”) was filed under 35 U.S.C. § 371 in the names of Ursula Wiederman, Hubert Pehamberger, Otto Scheiner, Erika Jensen-Jarolim, Christoph Zielinski, Heimo Breiteneder, and Soldano Ferrone (“the named inventors”). The ‘064 application is a national-stage application of PCT International Application No. PCT/EP04/06519 (“the ‘06519 PCT application”) and was filed without an executed oath or declaration. On January 25, 2007, the U.S. Patent and Trademark Office mailed a Notice of Missing Requirements, requiring an executed declaration as well as an additional claim fee. A copy of that notice is enclosed.

Shortly thereafter, declaration and assignment documents were forwarded to attorneys in Europe (Kador & Partner) who in turn forwarded the documents to their client, Biolife Sciences Forschungs- und Entwicklungsgesellschaft m.b.H. (“Biolife Sciences”), a Vienna-based biotechnology company and the named applicant for the ‘06519 PCT application. Robert Schaechter, the manager director for Biolife Sciences, sent a Declaration for Dr. Ferrone to execute immediately after receiving the documents from Kador and Partner in February 2007.

*See Exhibit 1 (declaration from Mr. Schaecter).*

All of the named inventors other than Dr. Ferrone executed the declaration and assignment documents, and copies of the executed declaration and assignment documents are enclosed. After attempts to have Dr. Ferrone sign the declaration naming him as an inventor of the ‘064 application were unsuccessful, Biolife Science’s European attorneys advised the undersigned that Dr. Ferrone was inadvertently listed as an inventor of this application. Accordingly, a statement indicating that Dr. Ferrone’s inclusion as an inventor of this application

was inadvertent and without deceptive intent on his part was prepared and forwarded to Dr. Ferrone via Biolife Science in July 2007. Dr. Ferrone continued to refuse to sign any documents.

Mr. Schaechter sent a follow-up email to Dr. Ferrone on July 27, 2007 regarding his refusal to execute documents related to this application. *See Exhibit 2 (e-mail string between Mr. Schaechter and Dr. Ferrone with personal information redacted).* Dr. Ferrone replied, "My understanding of the situation is that all the profits will go to the biotech company [Biolife Sciences] which has been set up in Vienna. Under these conditions I do not see any advantages for me to be part of the patent application." *Id.*

Because of Dr. Ferrone's refusals, further review and investigation was conducted. Based on the information gathered so far, the undersigned concludes that Dr. Ferrone should still be listed as an inventor at this time. The undersigned has made preparations to interview the named inventors, including Dr. Ferrone, and will make a final determination of inventorship of this application as soon as all necessary factual information can be obtained.

### III. LAST KNOWN ADDRESS OF THE NON-SIGNING INVENTOR

The last known address of Dr. Ferrone is Department of Immunology, Roswell Park Cancer Institute, Elm & Carlton Streets, Buffalo, New York, 14263.

### IV. CONCLUSION

In view of the facts outlined above, the enclosed evidence, and the executed Oath/Declaration from Ms. Wiedermann, Mr. Pehamberger, Mr. Otto, Ms. Jensen-Jarolim, Mr. Zielinski, and Mr. Breiteneder, the undersigned respectfully submits that this application is entitled to status under 37 C.F.R. § 1.47(a).

The required petition fee under 1.17(g) (\$200), fee for missing requirement surcharge (\$65), fee for multiple dependent claim surcharge (\$180), and fee for extension of time 5 months (\$1,080) are included herewith (total \$1,525).

08/28/2007 GFREY1 00000119 10562064

01 FC:2617 65.00 OP  
02 FC:1806 180.00 OP

08/28/2007 GFREY1 00000119 10562064

04 FC:1463 200.00 OP

If the Commissioner has any questions, the undersigned would appreciate a telephone call to the number indicated.

**EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 13-3250. This paragraph is intended to be an **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with C.F.R. § 1.136(a)(3).

Respectfully submitted,

**MILBANK, TWEED, HADLEY & McCLOY LLP**

August 27, 2007

By:

*Enrique Langton* *Enrique Langton*  
Enrique Langton Reg. No. 37,304 / for  
Einar Stole  
Registration No. 47,272

**Customer No. 38647**

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AUG 27 2007  
PATENT & TRADEMARK OFFICE

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/562,064	Ursula Wiedermann	37488.00900US
INTERNATIONAL APPLICATION NO.		
PCT/EP04/06519		
I.A. FILING DATE	PRIORITY DATE	
06/17/2004	06/23/2003	
CONFIRMATION NO. 9633		
371 FORMALITIES LETTER		
 *OC00000022139221*		

Date Mailed: 01/25/2007

**NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)**

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated / Elected Office (37 CFR 1.495).

- Indication of Small Entity Status
- Copy of the International Application filed on 12/22/2005
- English Translation of the IA filed on 12/22/2005
- U.S. Basic National Fees filed on 12/22/2005
- Priority Documents filed on 12/22/2005

The applicant needs to satisfy supplemental fees problems indicated below.

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Additional claim fees of **\$180** as a small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.
- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.
- To avoid abandonment, a surcharge (for late submission of filing fee, search fee, examination fee or oath or declaration) as set forth in 37 CFR 1.492(h) of **\$65** for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.

**SUMMARY OF FEES DUE:**

Total additional fees required for this application is **\$245** for a Small Entity:

- **\$65 Surcharge.**
- Total additional claim fee(s) for this application is **\$ 180**
  - **\$180** for multiple dependent claim surcharge.

**ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTHS FROM THE DATE OF THIS NOTICE OR BY 32 MONTHS FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.**

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

Registered users of EFS-Web may alternatively submit their reply to this notice via EFS-Web.  
<https://sportal.uspto.gov/authenticate/AuthenticateUserLocalEPF.htm>

For more information about EFS-Web please call the USPTO Electronic Business Center at **1-866-217-9197** or visit our website at <http://www.uspto.gov/ebc>.

**If you are not using EFS-Web to submit your reply, you must include a copy of this notice.**

SHELBY J VIGIL

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Telephone: (703) 308-9140 EXT 224

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**PART 1 - ATTORNEY/APPLICANT COPY**

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U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
10/562,064	PCT/EP04/06519	37488.00900US

FORM PCT/DO/EO/905 (371 Formalities Notice)



IAP12 Rec'd PCT/PTO 27 AUG 2007

PTO/SB/21 (09-06)

Approved for use through 03/31/2007. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	10/562,064
		Filing Date	June 17, 2004
		First Named Inventor	Ursula WIEDERMANN
		Art Unit	Not yet assigned
		Examiner Name	Not yet assigned
Total Number of Pages in This Submission		Attorney Docket Number	37488.00900

### ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached  <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input checked="" type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers  <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input checked="" type="checkbox"/> Power of Attorney, Revocation <input checked="" type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please Identify below):
<b>Remarks</b> 1. Declaration 2. Copy of Notification of Missing Requirements 3. Check for \$1,525.00 4. Power of Attorney 5. Statement Under 37 C.F.R. 3.73(b) 6. Copy of Assignment		

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Milbank, Tweed, Hadley & McCloy LLP		
Signature	<i>Enrique Longton</i> ENRIQUE LONGTON Reg No. 47,304 for		
Printed name	Einar Stole		
Date	August 27, 2007	Reg. No.	47,272

### CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name			Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



AUG 27 2007

PTO/SB/17 (07-07)

Approved for use through 06/30/2010. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

## For FY 2007

Applicant claims small entity status. See 37 CFR 1.27

**TOTAL AMOUNT OF PAYMENT** (\$ 1525.00)

### Complete if Known

Application Number	10/562,064
Filing Date	June 17, 2004
First Named Inventor	WIEDERMANN
Examiner Name	Not Yet Assigned
Art Unit	Not Yet Assigned
Attorney Docket No.	37488.00900

### METHOD OF PAYMENT (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify): \_\_\_\_\_

Deposit Account Deposit Account Number: 13-3250 Deposit Account Name: 37488.00900

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

Charge fee(s) indicated below  Charge fee(s) indicated below, except for the filing fee

Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17  Credit any overpayments

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

### FEE CALCULATION

#### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity	Fee (\$)	Small Entity	Fee (\$)	Small Entity	
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

#### 2. EXCESS CLAIM FEES

##### Fee Description

Each claim over 20 (including Reissues)

##### Small Entity

Fee (\$)

Fee (\$)

50 25

Each independent claim over 3 (including Reissues)

200 100

Multiple dependent claims

360 180

##### Total Claims

##### Extra Claims

Fee (\$)

Fee Paid (\$)

##### Multiple Dependent Claims

Fee (\$)

Fee Paid (\$)

\$180

- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims Extra Claims Fee (\$) Fee Paid (\$)

- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

#### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$)

- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

#### 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): Oath or Declaration Surcharge, 5 mos. extension, petition fee

\$1345

### SUBMITTED BY

Signature	<i>Erin Stole Reg. No. 47,304</i>	Registration No. (Attorney/Agent) 47,272	Telephone 202-835-7553
Name (Print/Type)	Eina Stole	Date August 27, 2007	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

BioLifeScience  
Kohlmarkt 3  
A-1010 Vienna

Vienna 2007 08 23

To Kador and Kador  
Corneliusstrasse n15  
D- Muenchen



We confirm having sent the documents concerning the declaration of inventors as attached - to Prof. Soldano Ferrone in February 2007 - immediately after we have received mentioned documents from patent office Kador and Kador.

Robert Schaechter



Managing Director  
BIO-LIFE SCIENCE